IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

WP(C).No. 26665 of 2005(Y)

OS.653/2003 of PRL.MUNSIFF COURT, CHERTHALA
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PETITIONER:

K.G. BALAKRISHNAN,
PARVATHY, VAYALAR MURI, VAYALAR EAST VILLAGE.

BY ADV. SMT.P.VIJAYAMMA

RESPONDENTS:
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1. K.R. BABU, S/O. RAGHAVAN,
KALATHIPARAMBIL VAYALAR MURI, VAYALAR EAST VILLAGE

2. BABY, W/O. OF -DO-.

3. LIBESH, S/O. -DO- -DO-.

4. K.R. RAJENDRAN OF -DO- -DO-.

5. CHELLAMMA,
PUTHUVAL NIKARTHU, -DO- -DO-.

6. MOHANAN OF -DO- -DO-.

7. SAMSON OF -DO- -DO-.

8. STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY,
GOVT.SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.K.V.SADANANDA PRABHU
GOVERNMENT PLEADER SRI.V.T.K. MOHANAN -R8

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 8/01/2007, ALONG WITH WPC NO. 33864 OF 2004 THE COURT ON 08/01/2007 DELIVERED THE FOLLOWING;

FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.26665/05 & 33864 OF 2004

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Dated this the 8th day of January,2006

JUDGMENT

Petitioner in W.P.(C) 26665/05 is the respondent in W.P.(C) 33864/04. He is the plaintiff in O.S.653/03 on the file of Munsiff Court, Cherthala. First respondent in W.P.(C) 26665/05 is the petitioner in W.P.(C)33864/04 and the first defendant in the suit. The other respondents in W.P.(C) No.26665/05 are the other defendants. After the filing of the petitions plaintiff died. His wife was impleaded as the second petitioner in W.P.(C)26665/05 and the second respondent in W.P.(C)33864/04. Suit was filed for permanent prohibitory injunction. In the suit, plaintiff filed I.A.1729/04 an application to restrain the Tahsildar from measuring property of first defendant as requested by first defendant under Ext.P3 application. Under Ext.P1 order, learned Munsiff directed not to measure the

property as the suit is pending before the Court in O.S.653/03. First defendant is challenging that order in W.P.(C) 33864/04 contending that Tahsildar is competent to measure the property as requested under Ext.P3 application and fact that the suit is pending is not a reason to interfere with that order. According to first defendant, the property to be measured under Ext.P3 is not the suit property in O.S.653/03. The plaintiff in W.P.(C) No.26665/05 is challenging Ext.P5 order passed by the Munsiff disallowing the request for a direction to the Commissioner to be appointed, to note the improvements as well as properties of the defendant as items 2 to 4 in the commission application.

2. Learned counsel appearing for petitioners and respondents were heard.

3. Under Ext.P5 order, learned Munsiff appointed the Commissioner. Finding that points 2 to 4 sought to be noted by petitioner are not relevant and necessary for the purpose of the suit, learned Munsiff did not direct the Commissioner to file a report on that aspect and restricted the

appointment only on points 1 and 5. The question is whether exercising the extra ordinary jurisdiction of this court under Article 227 of Constitution of India, that order is to be interfered?. As the Commissioner was appointed and Commissioner has to inspect the property, Commissioner may note points 2 to 4 also as sought for by plaintiff in the Commission application. The question whether they are relevant or not may be decided by learned Munsiff at the time of evidence. W.P.(C) 26665/05 is disposed accordingly.

4. The arguments of the learned counsel appearing for petitioners in W.P.(C)33864/04 was that the property directed to be measured under Ext.P3 application is not the suit property in O.S.653/03 and in such circumstance, Ext.P1 order is to be quashed. The arguments of learned counsel appearing for petitioners was that the property is the same suit property. Whether the suit property in O.S.653/03 is the property sought to be measured by the first defendant under Ext.P3 is to be considered by the learned Munsiff. But learned

Munsiff cannot restrain the Tahsildar from exercising his powers to measure the property as applied for by the first defendant. True, whatever be the measurement, if it is on the identity of the plaint schedule property in O.S.653/03, the order that may be passed on such measurement could only be subject to the result in O.S.653/03. Ext.P1 order is quashed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006